UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.243/1994/L.6
6 June 1994
ENGLISH
ORIGINAL: ENGLISH/FRENCH

AD HOC INTERGOVERNMENTAL WORKING GROUP
OF EXPERTS ESTABLISHED PURSUANT TO
GENERAL ASSEMBLY RESOLUTION 48/218
Second session
13-17 June 1994
Agenda item 3

ALLEGED CASES OF FRAUD IN THE UNITED NATIONS: STUDY OF THE POSSIBILITY OF THE ESTABLISHMENT OF A NEW JURISDICTIONAL AND PROCEDURAL MECHANISM OR OF TH' EXTENSION OF MANDATES AND IMPROVEMENT OF THE FUNCTIONING OF EXISTING JURISDICTIONAL AND PROCEDURAL MECHANISMS

Observations regarding measures to reduce alleged cases of fraud

Views of Mr. Lelong, expert representing the Government of France

In this communication, which is being submitted for consideration at the second session (13-17 June 1994) of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218, the French Government wishes to raise three points:

(1) What is the mandate of the Working Group?

(2) What substantive conclusions should be drawn from the Working Group's first session?

(3) Why is a committee to detect budgetary irregularities necessary?

I. MANDATE OF THE WORKING GROUP

General Assembly resolution 48/218 established the Working Group in order to "address alleged cases of fraud". The actual terms of the Working Group's mandate from the General Assembly need to be analysed first so that the Group's priority tasks can be identified.

To begin with, the Assembly's reference to "alleged cases of fraud" is not a casual one. This is because the problem of fraud in its entirety is far too vast to be considered meaningfully in three short five-day sessions. The concept of fraud is a difficult one to grasp precisely. It is not defined by everyone in the same way. It does, however, imply intent or the existence of actions designed to deceive others, and the intent or actions can only be confirmed, with difficulty, after the fact.

It is one thing to identify, prosecute and punish the perpetrators and/or beneficiaries of fraud. It is quite another thing to study the objective conditions that give rise to fraud in the first place - possible regulatory inadequacies, negligence or serious error on the part of the approving and/or certifying officer; this is the task set in resolution 48/218, namely to "address alleged cases of fraud".

On the one hand, this involves the perpetrators of fraud and ways of dealing with them (disciplinary measures within the United Nations and civil and criminal action in the appropriate courts). On the other hand, it has to do with the search for preventive measures within the Organization itself and its financial system that can reduce the number of cases of presumptive fraud. These two goals, although complementary, are separate. They must therefore be approached differently and in sequence, starting with the one targeted in the specific mandate given in resolution 48/218, namely the alleged cases of fraud.

To do otherwise would be to deny that there was any room for improvement in the Organization's financial management system, while blaming its weaknesses entirely on unscrupulous staff members. This is surely not what the General Assembly had in mind.

II. OUTCOME OF THE FIRST SESSION OF THE WORKING GROUP (11-15 APRIL 1994)

The meetings with key figures in the existing system of financial control were valuable because they showed the Working Group that:

1. The Financial Regulations and Rules are unclear, incomplete and relatively inaccessible, at least in the view of some of those who addressed the Working Group. At the very least, then, there is some doubt as to the quality of the financial norms which certifying officers are supposed to apply. If questioned, the national experts participating in the work of the Board of Auditors would probably confirm this criticism;

2. The only operational criterion used to evaluate the conduct of approving and certifying officers was compliance (or non-compliance) with the prescribed budget management norms. The term currently used by representatives of the Controller's Office is "misconduct", since the Office cannot use the term "fraud".

It would be worthwhile, then, for the Working Group to focus on this concept (which in all likelihood is closely related to the concept of blatant irregularity, associated with the concept of undue financial gain) rather than

worry about detecting fraud per se when reviewing prevention mechanisms; to do the latter would be futile, since by definition an act of fraud can be defined as such only after it has been committed, given the element of intent and the deception that must be proved. This confirms what was stated earlier with regard to the Working Group's mandate from the General Assembly;

3. The number of staff engaged in internal control is very low - a total of 40 individuals, according to the experts;

4. An inadequate response was given to the question of whether the full roster of approving officers, designated approving officers, certifying officers and designated certifying officers was published, regularly updated and verified by the internal control mechanism. It is thus logical to assume that such a roster is neither available nor used for internal monitoring;

5. There was no answer at all to the question of whether there was any systematic monitoring of the transactions carried out by individual approving or certifying officers, either globally or by means of surveys. Under the circumstances, it can be assumed that such monitoring does not occur within the internal control system;

6. The reply from the representative of the Board of Auditors regarding the number of compliance tests conducted by external auditors as a share of their total workload confirms the report, heard also from other sources, that, notwithstanding the reference to standards of the International Organization of Supreme Audit Institutions (INTOSAI) with which the members of the Board of Auditors claimed to comply, the percentage of compliance tests is quite low as a rule.

A number of conclusions can be drawn from the information obtained by the Working Group:

(a) The Financial Regulations and Rules must be reviewed in their entirety with a view to making them clearer, more complete and more readily accessible.

Annex I provides examples which relate to the rules governing procurement.

While the Working Group simply cannot conduct such a review itself, it might wish to formulate a recommendation to that effect in its report to the General Assembly. The report could suggest that a joint group composed of national experts and representatives of the Secretariat be established to conduct the review;

(b) Internal auditing within the United Nations Secretariat must be strengthened.

The Working Group might submit comments, noting the weakness identified in this document, on the understanding that the implementation of recommendations relating to internal audit are in fact the competence of the Secretary-General;

(c) The Board of Auditors and the internal auditors, once they are in a position to do so, must place greater emphasis in their work on compliance tests.

Of course all these issues are interrelated: the auditors cannot be encouraged to detect management errors when the norms whose application they are to monitor are incomplete, imprecise or inaccessible and there is no specific mechanism prior to the audit for monitoring, observation or possible publication of the errors or irregularities found.

This serves to justify the proposal by the French Government to establish a committee to detect budgetary irregularities.

III. FOR A COMMITTEE TO DETECT BUDGETARY IRREGULARITIES

1. We are not writing on a blank page. The Working Group's proposals must take account of the existing system, must be in keeping with its spirit and must remedy its shortcomings without thereby contradicting what now exists and works.

The principle of dual financial control - internal and external - exists at the United Nations. The strengthening of internal financial control is not directly the Working Group's problem, even though, in its final conclusions, the Group finds it necessary to indicate its concern about this matter (see above).

The role of the Board of Auditors is to certify the accounts and evaluate proper management (cost/benefit ratio) and, at the same time, to verify the regularity of the financial transactions decided upon by the approving officers and approved by the certifying officers. The verification is carried out with due regard to the financial regulations applicable to such transactions, through the analysis of areas of risk and through surveys applied mainly to those areas.

The ultimate goal of the entire financial control system is to make sure that the contributors - that is to say, the Member States - get the maximum benefit for their money. In that respect, the evaluation of proper management is essential. The monitoring of regularity is a different matter. Everyday practical experience shows that respect for a system of financial norms is the most economical and most certain way to ensure proper financial management and a satisfactory cost/benefit ratio. Respect for regularity is a necessary but not sufficient condition for proper financial management.

The placement of emphasis, especially in the public sector, on the monitoring of regularity is a concern shared by most national auditors in the public sphere and by the private experts who often work with them in that sphere. This is evidenced, inter alia, by a very recent study (15 April 1994) prepared by the International Federation of Accountants (IFAC), Public Sector Committee (see extracts, annex II). The larger an organization is and the more differences in education, mentality, legal concepts - in short, differences in behaviour - exist between its various officials, the more necessary it will be to make the control system include respect for certain norms and an auditing of the manner in which that respect is demonstrated.

2. In order to be effective, a system of financial norms must meet a number of conditions:

(1) The norms must be complete, simple, clear and capable of evolving on the basis of experience;

(2) The financial audits - both internal and external - must devote sufficient attention to the manner in which the norms are applied.

In the first place, the most obvious bad practices must be detected. Unless the management system makes provision for self-monitoring, this means a methodical analysis of the areas of risk in management and a sufficient number of survey tests, especially in those areas of risk.

In the second place, the internal and external auditors should, where necessary, draw general conclusions on the basis of the infractions of rules which they detect, with a view to improving those norms on a permanent basis;

(3) From the individual standpoint, infractions of norms, if they are particularly serious, must be examined case by case by a specialized committee whose decisions must be final, that is to say, must have the authority of final judgement.

Why a special committee? Because the norms that must be used as reference are too specific to permit entrusting the monitoring of their application, at least at first instance, to judges other than audit professionals. On appeal, by contrast, an administrative tribunal with general competence may handle the matter.

Why must the decisions be final? Because experience proves that a decision having the authority of final judgement, emanating from audit professionals and definitively fixing the amount of the financial damage suffered by the United Nations will subsequently be very useful in facilitating both the disciplinary action within the Organization itself and possible prosecution before the competent national courts with a view to recovering the sums lost.

3. The committee in question need not be made up of permanent staff members. What is important is that they should possess the necessary guarantees of competence and independence, regardless of whether or not they are part of the Organization.

The committee's secretariat could be provided by that of the Board of Auditors. Operating costs should therefore be limited.

The committee should act solely <u>when a case is referred to it</u>:

- by the Secretary-General;
- by the internal auditor; or
- by the Board of Auditors (external control).

One or another of those three authorities would have the sole power to decide whether or not the person guilty of an instance of mismanagement that is particularly serious, either by its nature or by reason of its consequences, should be brought before the committee. Provision should be made to ensure that no one is brought before the committee unless both of the following two elements exist:

- Non-compliance with the norms to a degree considered sufficiently serious;

- A significant financial loss to the United Nations, regardless of whether or not there was deliberate intent on the part of the person concerned to gain undue financial advantage for himself or for a third person.

The committee could decide to publish or not to publish its decisions, possibly without mentioning the names of the persons concerned. This would constitute the "sanction", it being understood that thereafter the Secretary-General could still, if he wished, institute disciplinary, civil or criminal proceedings against the officials thus designated by the committee.

The cases handled by the committee should, parallel with the actions of the internal audit and of the Board of Auditors, help to discover gradually the points on which the financial regulations could be improved and supplemented.

The existence of the committee would in itself constitute an incentive, especially for the external auditor but also for the internal auditor, to make more frequent checks of financial transactions, taken one by one, that is to say, of the behaviour of those officials (the approving and certifying officers) responsible for carrying them out and their compliance with the norms of budget management. Viewed from the standpoint of the external auditor, the establishment of the committee would be equivalent to an opportunity to set up, as suggested by the aforementioned IFAC study, an additional reporting system specializing in mismanagement cases.

ANNEX I

Some examples of the inadequacy of the Financial Regulations of the United Nations

The establishment of a committee to detect budgetary irregularities should be accompanied by a revision of the Organization's Financial Regulations. The present texts are imprecise and inadequate in a number of places, a few examples of which are given below.

A. Purchasing procedures

Regulation 10.5 states that "tenders for equipment, supplies and other requirements shall be invited by advertisement" but immediately adds, for the sake of the flexibility regarded as essential to the management of a large-scale organization whose operations extend over several continents, "except where the Secretary-General deems that, in the interests of the Organization, a departure from the rule is desirable".

The application of this regulation is explained in the "financial rules", which are established by the Secretary-General and therefore rank lower in the hierarchy of norms.

Under those rules, the powers to conclude contracts are very widely delegated and sub-delegated. For example, in the regional commissions of the United Nations, the responsibility for concluding contracts is reserved not only to the Executive Secretary, a clearly identified functional post, but also to staff members duly authorized by him, that is to say, persons listed by name who would normally be liable to change their posts. The same is true in many decentralized units. The list of those officials by whom "contracts for the purchase, rental or sale of services, supplies, equipment or other requirements shall be entered into on behalf of the United Nations" (rule 110.16) is not systematically kept up to date. As a result, the power to sign contracts is not always precisely defined.

The exceptions to calling for bids or proposals are numerous (see rule 110.19) and defined in an imprecise manner (for example, when "the exigency of the service does not permit the delay attendant upon the issue of invitations to bid or the calling for proposals" or when the "other official authorized ... determines that competitive bidding or calling for proposals will not give satisfactory results".

It is hardly surprising, therefore, that in actuality competitive bidding or even calling for proposals remains the exception. The Board of Auditors has pointed out this situation for many years and, in its report, 1/ observed in particular that "only 17 per cent of 5,444 purchase orders issued during the biennium [1990-1991] at Headquarters was awarded through the bidding process".

The General Assembly (Fifth Committee) recognized the relevance of the observations and recommendations of the Board of Auditors and has repeatedly, in

particular by its resolutions 47/211 of 23 December 1992 (paras. 9 and 10) and 48/216 of 23 December 1993 (part B, paras. 3 and 4), asked the Secretariat for proposals aimed at revision of the Financial Regulations in order "to make purchasing policy on the acquisition of goods and services more cost-effective and transparent, inter alia, by reducing the number of exceptions to competitive bidding and ensuring that the reasons for such exceptions are recorded in writing" (resolution 47/211, para. 9 (b).

Conversely, other rules are so rigorous as to be incompatible with the intelligent administration of purchasing activities. This is true, for example, of rule 110.21, which baldly states that "contracts shall be awarded to the lowest acceptable bidder", without leaving any room for consideration of the relationship between quality and price.

In order to evaluate the possibilities of fraud, it would also be necessary to take into account the manner in which such provisions are applied. For example, in the case of the United Nations Postal Administration, the (lowest) bids of some enterprises were rejected on the ground that they had been received after the expiry of the time-limit for response, even though there was no evidence for making such a categorical assertion in the absence of a systematic recording of incoming mail by means of a time stamp (the delay cited as the reason for rejecting the bid in question was no more than a few hours).

B. Rules relating to the inventory of non-expendable property

The financial provisions relating to this question, in particular rules 110.25 to 110.31, are not sufficiently precise, inasmuch as the concept of non-expendable property is not defined. It is, in fact, an administrative instruction, ST/AI/374 of 16 January 1992, which defines the term "non-expendable property" as meaning items valued at US$ 1,500 or more and with a serviceable life of five years.

The Board of Auditors has pointed out in its report 2/ that under that definition, 99 per cent of the quantity of existing non-expendable property (items valued at $500 or more) is excluded from the concept of non-expendable property.

The Board of Auditors 3/ also pointed out some deficiencies in the conduct of physical inventory and a lack of accountability for property issued to offices and departments. Such deficiencies seem to be particularly serious in the sphere of peace-keeping operations.

The Fifth Committee endorsed the recommendations of the Board of Auditors for implementing stringent inventory controls on non-expendable property (General Assembly resolutions 46/183, para. 17 (c), and 47/211, para. 9 (e)).

C. The inadequacy of formally enunciated and published financial rules

Beyond the rules formally enunciated and published in texts, such as the Financial Regulations and Rules, account must also be taken of the many provisions contained in documents which remain internal to the services. In practice, such internal documents lend themselves more or less easily to falsification. This was true a few years ago, and may still be true today, of the texts which specify the documents that must be submitted to prove eligibility for education allowances. Their provisions were circumvented by a good many staff members of the Organization, with or without the complicity of the authorities of certain educational institutions.

D. The inadequacy of the accounting principles contained in the Financial Regulations

In general, certain accounting principles adopted by the Organization and not appearing in the regulations should normally be stated explicitly in the summary of significant accounting policies. Those principles authorize "facilities", each of which can provide an opportunity for fraud.

This is true, inter alia, of the principle which authorizes the inclusion of certain unliquidated obligations in the Organization's expenditures when the actual existence of the obligation has not been established. A strict rule in this matter would require that such obligations should be so included only when they reflect services actually rendered or goods actually delivered (the delivery principle). Such a strict rule has almost never prevailed at the United Nations. On the contrary, in many cases the vaguest kind of "commitment" (as, for example, the issuance of a purchase voucher) suffices to justify the accounting of the expenditure in question. By this technique, uncommitted credits can easily be used up at the end of a period.

Notes

1/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 5 (A/47/5), vol. I, paras. 228 and 229.

2/ Ibid., paras. 255 to 258.

3/ Ibid., paras. 259 to 274.

ANNEX II

Extracts from the study entitled "Auditing for compliance with authority", published on 15 April 1994 by the International Federation of Accountants, Public Sector Committee (IFAC)

Introduction

1. In any organization management is responsible for ensuring compliance with the laws, regulations and other authorities applicable to its activities, particularly authorities for raising and spending money. Compliance or authority auditing, therefore, is an important element of auditing both in the public and the private sector. Compliance, however, takes on added significance in the public sector because Governments and other public-sector entities are generally created by, and mandated to operate with and within, a regulatory framework. Therefore they are subject to more numerous and specific authorities than are private-sector organizations.

...

4. In many jurisdictions, public officials, legislators and the general public have been devoting increasing attention to the accountability of governmental and other public-sector entities. In some jurisdictions, authority requirements imposed on public-sector entities have increased. In other jurisdictions, authority requirements have been relaxed to facilitate achievement of results. Auditing for compliance with authority, however, remains an important function for public-sector auditors everywhere.

...

Scope of the audit

11. It is the responsibility of the management of the audited entity to ensure compliance with applicable authorities. This responsibility encompasses identifying the requirements with which the entity must comply, implementing internal control systems designed to provide reasonable assurance that compliance is achieved and taking appropriate action whenever a breach of legislation or other authorities occurs.

12. It is the responsibility of the auditor to determine the specific mandate for conducting compliance with authority work, to consider the impact of such requirements on the scope and conduct of the audit and to provide reasonable assurance of detecting abuses or irregularities that could significantly affect the audit objectives.

...

Conduct of the audit

16. At the operational stage of the audit, the auditor should review and assess whether the entity's operation is in compliance with the significant pertinent legislation and other authorities that he has identified. Some of the areas that could be considered would include:

- Organizational structure (for example, do appointments to the governing board conform with the provisions of enabling legislation, or have the specific funds required by law been established?);

- Policies and procedures governing the acquisition, management and utilization of the entity's resources (for example, contracts and grants procedures, or revenue or debt policy);

- Policies detailing programme eligibility requirements;

- Internal control systems designed to ensure compliance (for example, budgetary control system, control of deposits and investments);

- Transactions (for example, are expenditures in excess of the legally appropriated amounts, is personnel compensation in accordance with relevant legal and regulatory provisions, particularly with respect to higher executive levels?).

...

18. In addition, the audit of compliance with authority could be broadened to include assessment of the internal control framework established by management to minimize the occurrence of non-compliance. As a minimum, the auditor should be alert to situations which indicate fraudulent acts. Where fraud is suspected, sufficient tests should be conducted to determine whether there are reasonable grounds to support the suspicion and, if so, to report to the appropriate body. Legal advice should be sought if appropriate.

Reporting

19. In many jurisdictions, the auditor should prepare a written report on the examination of compliance with applicable authorities. Depending on the audit mandate and related examination, the report could take the form of: an opinion on whether the entity complied with specified authorities; an opinion on whether the transactions that have come to the auditor's attention in the course of discharging other audit responsibilities were carried out in compliance with specified authorities, a report of instances of non-compliance observed.

20. The auditor's findings may be included in a separate report (a compliance audit report), in a report on financial statements (a financial audit report) or a report on economy, efficiency and effectiveness (a performance audit report).

21. When long-form reports are published, as is generally the case in compliance audits, separate reports may have to be prepared for the audited entity, its governing board, the relevant minister or ministers, supervisory bodies and/or legislative bodies. In such cases, only the more serious weaknesses or actual breaches of legislation and other authorities revealed by the audit would be reported to the higher level of government. Other findings may be conveyed to lower levels of government (including officials of the audited entity) in separate communications.

22. When, in a financial audit, an audit opinion is called for, the auditor should determine whether any non-compliance that has been identified materially affects the opinion on the fairness of presentation of the entity's financial position and result of operations. When an opinion is called for in a specific compliance audit, the auditor should ascertain whether the non-compliance significantly affects the opinion on compliance of the entity's operations with the specified legislation. Where the auditor considers that the non-compliance would be significant, a qualified opinion should be issued.

23. Subject to the audit mandate, the auditor must exercise professional judgement in determining the materiality of non-compliance. Assessing the significance of non-compliance involves both quantitative and qualitative considerations. One of the criteria in determining materiality is the monetary amount involved. But it cannot always be measured in monetary terms. Qualitative and quantitative considerations include the cumulative effect of immaterial items, the needs of the users of the report, the nature of the pertinent authorities and the degree of public interest in the matter. The issue of materiality may not be relevant in all jurisdictions and it may be different for the audit opinion and the report.

BIBLIOGRAPHY

Australia

- Compliance Auditing, exposure draft of Statement of Auditing Practice No. 30, August 1989, Australian Accounting Research Foundation.

Canada

- Auditing for Compliance with Legislative and Related Authorities, Public Sector Auditing Statement No. 3, May 1986, Canadian Institute of Chartered Accountants.

- Auditing Compliance with Legislative Authority, Office of the Auditor General of Canada, 1991.

European Economic Community

- Manuel de vérification de la Cour des comptes des Communautés européennes, octobre 1989.

France

- Décret No. 62-1587 du 29 décembre 1962 portant réglement général sur la compatibilité publique.

- Loi du 22 juin 1967, modifiée, sur la Cour des comptes, et décret du 11 février 1985.

- Manuel de vérification de la Cour des comptes, révision juin 1990.

United Kingdom of Great Britain and Northern Ireland

- The Impact of Regulations on Public Sector Audits, Auditing Guideline issued by the Consultative Committee of Accountancy Bodies, March 1988.

United States of America

- Government Auditing Standards, 1988 revision.

- Compliance Auditing applicable to Governmental Entities and other Recipients of Governmental Financial Assistance. Statement on Auditing Standards No. 63, April 1989, American Institute of Certified Public Accountants.

International

- INTOSAI Auditing Standards, issued by the International Organization of Supreme Audit Institutions, June 1991.

UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.243/1994/L.7
15 June 1994

ORIGINAL: ENGLISH

AD HOC INTERGOVERNMENTAL WORKING GROUP
OF EXPERTS ESTABLISHED PURSUANT TO
GENERAL ASSEMBLY RESOLUTION 48/218
Second session
13-17 June 1994

DRAFT REPORT OF THE AD HOC INTERGOVERNMENTAL WORKING GROUP OF EXPERTS ESTABLISHED PURSUANT TO GENERAL ASSEMBLY RESOLUTION 48/218 ON THE WORK OF ITS SECOND SESSION

I. INTRODUCTION

1. The second session of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 of 23 December 1993 was held at United Nations Headquarters in New York from 13 to 17 June 1994.

II. ORGANIZATIONAL MATTERS

A. Attendance

2. The meeting was attended by experts from 24 Member States and representatives of invited United Nations bodies and offices. The list of participants is contained in annex I to the present report.

B. Organization of work

3. The Working Group considered the issues contained in paragraph 18 of the report of its first session (A/AC.243/1994/L.5) which it had identified at its first session as requiring further consideration. The Working Group had before it the schedule of work contained in a conference room paper (A/AC.248/1994/CRP.2).

4. The Working Group also decided to conduct informal consultations under the chairmanship of the two Vice-Presidents on the rules, procedures and mechanisms

in the financial area, on one hand, and on the rules, procedures and mechanisms in the disciplinary and administrative areas, on the other.

C. Documentation

5. In addition to the documents which were transmitted to the experts at their first session, the Working Group had before it a document entitled "Observations regarding measures to reduce alleged cases of fraud", submitted by Mr. Lelong, the expert representing the Government of France (A/AC.243/1994/L.6).

III. SUBSTANTIVE MATTERS

6. The Working Group agreed that at its first session it had conducted a general discussion of its mandate and had identified areas which required further review. Accordingly the Working Group decided to devote the second session to reviewing specific areas and arriving at certain conclusions. It was hoped that on the basis of the conclusions thus arrived at specific recommendations would emerge which would be transmitted to the General Assembly in fulfilment of its mandate, contained in resolution 48/218.

A. Magnitude of the problem and frauds committed from outside and inside the United Nations

7. At the outset of the deliberations on the magnitude of the problem, the representative of the Secretariat provided the Working Group with a breakdown of the cases of fraud for the biennium 1991-1992 and an indication of the dollar value of those cases.

8. Some experts expressed the view that the magnitude of the problem was not adequately conveyed by the statistics which were presented. It was felt that such data should have been supplemented with an in-depth description of cases in order to present a more complete picture. Moreover, while many experts wished to have an indication in dollar terms, what was presented was insufficient to enable an accurate assessment of the magnitude of the problem. Despite that difficulty the Working Group was of the view that the matter of any loss of the resources and injury to the image of the Organization was of such importance that it required serious examination.

9. Many experts expressed concern over losses, in some cases involving large sums of money, which the Organization had suffered in peace-keeping missions. It was not clear whether a mechanism existed which would reduce risks when handling large sums of cash. In cases where the fraudulent acts were committed by employees of Governments of Member States assigned to the United Nations, and yet not under the complete authority of the Secretary-General, one expert wondered whether such Governments should not be held responsible for the actions of their employees. One expert concluded that two kinds of proposals could be made in this regard. One proposal would deal with specific action which would be taken, and the other would identify areas, systems, rules and regulations, etc., which would require further review. In this connection some experts

stressed the need for conducting a more in-depth review of the existing systems prior to the submission of recommendations.

B. Review of disciplinary mechanisms

10. The Working Group took note of the detailed description by the Secretariat of the disciplinary mechanisms available to the Secretary-General to deal with cases of fraud and presumptive fraud. In addition, information was provided by the Secretariat on the procedures which were followed once a case of presumptive fraud was reported. The experts noted that the current disciplinary system did not distinguish cases of fraud from other cases of misconduct. The time it took to dispose of any one disciplinary case ranged from 5 weeks at the shortest, to 15 months at the longest, the average period being 6 weeks.

11. There was a general feeling that the process of dealing with cases of fraud from discovery to settlement was overly lengthy. It was questionable whether an efficient and expeditious treatment of fraud cases could be achieved under that system. Some experts wished to know what practical difficulties the Secretary-General had encountered in applying the disciplinary procedures. Some others enquired whether the Secretary-General had means of identifying how the fraud had occurred and of studying the causes and consequences of the fraud. Some wished to know whether disciplinary action would be taken even in those cases where intent to defraud had not been established.

12. Experts took note of a proposal which had been made by the Secretariat by which the Secretary-General would have the right to file suits before the United Nations Administrative Tribunal against staff alleged to have committed fraud against the Organization. While it was generally considered to be a good suggestion, one expert none the less had several questions regarding the implications of such a decision. Some wished to know what law would be applied by the Administrative Tribunal in those cases. Some wondered what action would be required and who would implement that action.

13. The composition of the Joint Disciplinary Committee, requiring participation of representatives of the staff, was noted along with the problems which emanated from that structure. It was further noted that all members of the Joint Disciplinary Committee were staff who volunteered their services while at the same time performing full-time their regular functions. One expert queried the necessity for continuing with the concept of "judgement by peers", while another wondered whether the Secretary-General had given consideration to upgrading the Joint Appeals Board to a court of first instance. A question was also raised as to whether the Secretary-General had filed civil suits against staff members before national courts in order to recover lost funds, and if so whether problems involving privileges and immunities had been encountered.

14. The experts were informed that if the General Assembly should decide to grant the Secretary-General access to the Administrative Tribunal, an amendment to the statute of the Tribunal would be required. Once that was achieved the Tribunal would apply the internal rules and regulations of the United Nations. However, it was explained that the United Nations had not found it cost-effective to pursue civil cases against staff and former staff members in

national courts. However, where the Organization itself was being sued, and the Organization chose to assert its privileges and immunities, arbitration would be proposed as an alternative.

15. The Working Group also discussed the institution of the ombudsman. The representative of the Secretariat informed the Working Group that although that matter was not a new one consultations were continuing, and therefore no definitive position could be presented at this time. However, it was noted that in the concept under consideration the ombudsman would be closer to a mediator or conciliator, rather than a legal institution, as it was understood in the Nordic countries.

C. Review of existing rules, procedures and mechanisms dealing with financial irregularities

16. The Working Group, having studied the Financial Rules and Regulations, concluded that they needed to be updated in many important areas in order to meet the changing circumstances. Clarification was required in many areas, including procedures for delegation of authority to certifying and approving officers, their appointment and its duration of office, as well as publication of the panel of certifying and approving officers. Many experts wished to receive information regarding the nature of internal financial control mechanisms, in particular for dealing with procurement and contracting. While the Working Group took note of the authorized threshold for expenditures, the information received did not clarify the procedures followed with regard to contracts falling within the authorized amount. In that connection the Working Group expressed concern that it had not been provided with requested clarification on the role of the requisitioning, approving and certifying officers, especially as regards their actions before and after a fraud was detected. Experts wished to know whether a system was in place for the regular review of documentation on procurement in use at the field level. The powers of the Committee on Contracts also required clarification. It was unclear whether the Committee on Contracts could reject proposed contracts, and what responsibility the members of the Committee bore with regard to contracts which they approved. Some experts wished to receive information regarding the procedures to be followed when liquidating peace-keeping missions.

17. In response it was stated that the approving officers were selected from the staff in the Office of Programme Planning, Budget and Finance, while the certifying officers were appointed by the Controller on the recommendation of the head of the department or office. There was a system of internal control known as "pre-auditing" by the staff of the unit themselves, which was not to be confused with the role of the internal audit. Concerning the procedures followed by the Committee on Contracts, the Working Group received from a representative of the Secretariat a detailed description of those procedures and mechanisms. The Composition of the Committee on Contracts at Headquarters and its mandate were also described.

D. Recovery

18. The issue of recovery of losses incurred by the United Nations was also deliberated by the Working Group. If the Organization was to avoid a total loss in a given case, the Secretary-General had to have effective means of recovering moneys. The Working Group noted with concern that there were cases where the Secretary-General had been unable to recover funds for a number of reasons. Among these were the departure of the staff member from the jurisdiction where the fraud had been committed, and the insufficient amount of money accessible by the Secretary-General for recovery. Questions were also raised as to what means of recovery existed for the Secretary-General in cases where fraudulent intent did not exist, yet loss had occurred either through misapplication or non-observance of the rules and procedures or outright negligence.

19. Various provisions within the Financial Rules and Regulations and the Staff Rules and Regulations existed which would enable recovery. However, the Working Group had not received sufficient information to enable it to determine the adequacy of those provisions. Therefore there was a need to clarify, for example, the use of the provisions on surcharge, e.g., how often they were invoked, and whether they were was applied in cases of fraud.

20. Among some of the ideas presented was the proposal that the Working Group might examine the possibility of effecting recovery from the pension benefits of the staff member involved in fraud. It was also suggested that consideration should be given to the establishment of a body dealing strictly with financial irregularities. In addition it was considered necessary to encourage the Secretary-General to sue persons engaged in defrauding the Organization in national courts. This process would be facilitated if States Members of the United Nations would enact legislation making it an offence under their national laws to defraud the United Nations.

IV. ARRANGEMENTS FOR THE THIRD SESSION

A. Issues to be considered

21. The Working Group decided to consider proposed recommendations which are contained in annex II to the present report.

B. Date of the next session

22. The Working Group decided to hold its third session at United Nations Headquarters from 6 to 9 September 1994.